

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JENNIE KIRKLAND,

06 CV 0331 (NG) (CLP)

Plaintiff,

-against-

ORDER

CITY OF NEW YORK, et al.,

Defendants.

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GERSHON, United States District Judge:

Both sides have filed objections to the Report and Recommendation of the Honorable Cheryl L. Pollak, magistrate judge, dated February 21, 2007, which recommended granting in part, and denying in part, plaintiff's motion for leave to amend her complaint. Judge Pollak recommended granting the motion to permit plaintiff to add New York City police officer Cowan, Captain Inzirillo, Lieutenant Bergin and Sergeant Lam as defendants and to add certain factual assertions and a conspiracy claim; she recommended denying the motion to add as defendants the remaining ten NYPD officers plaintiff seeks to add and the confidential informant.

With respect to defendants' objections, defendants appear to treat the motion to amend as one for summary judgment. Judge Pollak properly evaluated the motion as one to amend pleadings and applied the Rule 12(b)(6) standard to evaluate whether amendment would be futile. Upon *de novo* review of the objections, I adopt Judge Pollak's reasoning in its entirety.

Upon *de novo* review of plaintiff's objections, I again adopt Judge Pollak's reasoning in its entirety. The principal objection relates to whether plaintiff should be granted leave to add the confidential informant as a party. Judge Pollak, in a characteristically thorough, balanced and sensitive analysis, concluded that such an amendment should not be permitted. The authority cited

by plaintiff in no way undermines that analysis.

In sum, the Report and Recommendation of February 21, 2007 is adopted in its entirety. Plaintiff's motion for leave to amend her complaint is granted to the extent she may add as defendants Officer Cowan, Captain Inzirillo, Lieutenant Bergin and Sergeant Lam and may add the factual assertions she seeks to add and a conspiracy claim. The motion is denied insofar as plaintiff seeks to add as defendants ten additional NYPD officers and the confidential informant.

SO ORDERED.

/s/

NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
May 9, 2007